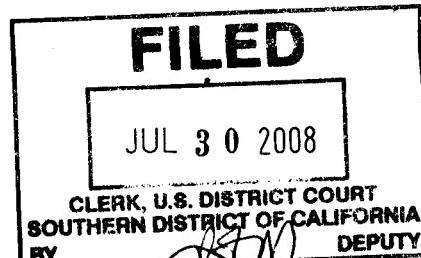


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7 UNITED STATES OF AMERICA

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA, ) Magistrate Case No. 08MJ2207  
11 Plaintiff, )  
12 v. )  
13 RUBEN TORRES-GALLARDO, )  
14 Defendant. )  
15

**STIPULATION OF FACT AND JOINT  
MOTION FOR RELEASE OF  
MATERIAL WITNESS(ES) AND  
ORDER THEREON**

(Pre-Indictment Fast-Track Program)

16       **IT IS HEREBY STIPULATED AND AGREED** between the plaintiff, UNITED STATES  
17 OF AMERICA, by and through its counsel, Karen P. Hewitt, United States Attorney, and  
18 Fred Sheppard, Assistant United States Attorney, and defendant RUBEN TORRES-GALLARDO,  
19 by and through and with the advice and consent of defense counsel, Kris J. Kraus, Federal Defenders  
20 of San Diego, Inc., that:

1. Defendant agrees to execute this stipulation on or before the first preliminary hearing  
date and to participate in a full and complete inquiry by the Court into whether defendant knowingly,  
intelligently and voluntarily entered into it. Defendant agrees further to waive indictment and plead  
guilty to the pre-indictment information charging defendant with a non-mandatory minimum count  
of Bringing in Aliens Without Presentation and Aiding and Abetting, in violation of 8 U.S.C.  
§ 1324(a)(2)(B)(iii) and 18 U.S.C. § 2.

27 //

28 //

FAS:psd:7/22/08

1           2. Defendant acknowledges receipt of a plea agreement in this case and agrees to  
 2 provide the signed, original plea agreement to the Government not later than five business days  
 3 before the disposition date set by the Court.

4           3. Defendant agrees to plead guilty to the charge pursuant to the plea agreement on or  
 5 before **August 20, 2008**.

6           4. The material witnesses, Maria Santos Hernandez-Pena, Tomasa Hernandez-Pena, and  
 7 Margarita Alonso-Martinez, in this case:

- 8           a. Are aliens with no lawful right to enter or remain in the United States;
- 9           b. Entered or attempted to enter the United States illegally on or about  
 10 July 18, 2008;
- 11           c. Were found in a vehicle driven by defendant at the San Ysidro, California Port  
 12 of Entry (POE) and that defendant knew or acted in reckless disregard of the fact that they were  
 13 aliens with no lawful right to enter or remain in the United States;
- 14           d. Were paying \$2,000-\$4,000 to others to be brought into the United States  
 15 illegally and/or transported illegally to their destination therein; and,
- 16           e. May be released and remanded immediately to the Department of Homeland  
 17 Security for return to their country of origin.

18           5. After the material witnesses are ordered released by the Court pursuant to this  
 19 stipulation and joint motion, if defendant does not plead guilty to the charge set forth above, for any  
 20 reason, or thereafter withdraws his guilty plea to that charge, defendant agrees that in any proceeding,  
 21 including, but not limited to, motion hearings, trial, sentencing, appeal or collateral attack, that:

- 22           a. The stipulated facts set forth in paragraph 4 above shall be admitted as  
 23 substantive evidence;
- 24           b. The United States may elicit hearsay testimony from arresting agents  
 25 regarding any statements made by the material witness(es) provided in discovery, and such testimony  
 26 shall be admitted as substantive evidence under Fed. R. Evid. 804(b)(3) as statements against interest  
 27 of (an) unavailable witness(es); and,

28 Stipulation of Fact and Joint Motion for Release of  
 Material Witness(es) And Order Thereon in  
 United States v. Ruben Torres-Gallardo

1 c. Understanding that under Crawford v. Washington, 124 S. Ct. 1354 (2004),  
2 “testimonial” hearsay statements are not admissible against a defendant unless defendant confronted  
3 and cross-examined the witness(es) who made the “testimonial” hearsay statements, defendant  
4 waives the right to confront and cross-examine the material witness(es) in this case.

5        6. By signing this stipulation and joint motion, defendant certifies that defendant has  
6 read it (or that it has been read to defendant in defendant's native language). Defendant certifies  
7 further that defendant has discussed the terms of this stipulation and joint motion with defense  
8 counsel and fully understands its meaning and effect.

9       Based on the foregoing, the parties jointly move the stipulation into evidence and for the  
10 immediate release and remand of the above-named material witness(es) to the Department of  
11 Homeland Security for return to their country of origin.

12 It is STIPULATED AND AGREED this date.

Respectfully submitted,

**KAREN P. HEWITT**  
**United States Attorney**

~~FRED SHEPPARD  
Assistant United States Attorney~~

KRIS J. KRAUS  
Defense Counsel for TORRES-GALLARDO

Ruben Torres Gallardo  
RUBEN TORRES-GALLARDO  
Defendant

16 Dated: 13/08

18 Dated: 7/21/88

20  
21 Dated: 7/20/01

22

25

26

**28 Stipulation of Fact and Joint Motion for Release of  
Material Witness(es) And Order Thereon in  
United States v. Ruben Torres-Gallardo**

## ORDER

Upon joint application and motion of the parties, and for good cause shown,

**THE STIPULATION** is admitted into evidence, and,

4           **IT IS ORDERED** that the above-named material witness(es) be released and remanded  
5 forthwith to the Department of Homeland Security for return to their country of origin.

**SO ORDERED.**

Dated:

~~United States Magistrate Judge~~